IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4034 OF 1998

Shri Shripati Alpparao Rokade,)
Age 59 years, Occ. Retired,)
Govt. Servant, R/o.B-119/2,)
Govt. Colony, Bandra (E),)
Mumbai-400 051.)..PETITIONER

Versus

1. State of Maharashtra)
through the Section Officer,)
Education & Employment Dept.,)
Mantralaya, Mumbai-400 032.)
2. State of Maharashtra)
through the Section Officer,)
General Administrative)
Department, Mantralaya,)
Mumbai-400 032.)
3. National Cadet Corps)
through Group Head Quarter,)
Mumbai (B) through its)
Administrative Officer,)
Having office at Old)
Sachivalaya, Mumbai-400 032.)
4. Deputy Director of Education)
Greater Mumbai, Old Custom)
House, Fort, Mumbai.)..Respodnents

Mr. N.V. Bandiwadekar, for the Petitioner.
Mr.R.M.Patne,AGP for the Respondent Nos.1,2 & 4.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 19th April,2005

ORAL JUDGMENT (PER F.I. REBELLO, J):

. The petitioner was in the service of the Armed Forces from 30th June, 1956 till he was discharged on 11th August, 1964. The petitioner thereafter joined as L.D.C. in the N.C.C. and worked there from 15th September, 1964 till 24th December, 1968. As there was disbandment of the Unit of N.C.C. the petitioners his services came to an end. He was subsequently appointed as a Clerk in the

office of the Labour Commissioner and worked from 18th February, 1969 till 31st January, 1996. By order dated 26th August, 1996 the Government of Maharashtra was pleased to condone the break in service between 12th August, 1964 to 14th September, 1964 and 29th December, 1968 to 17th February, 1969. By para.1 of the said order his service in Military from 30th July, 1956 to 11th August, 1964 was allowed to be counted in full towards his pension in accordance with the Rules.

2. The petitioner made representation on 26th November, 1996 to refix seniority in the cadre of Clerk/Typist in the office of Labour Commissioner after taking into consideration his previous service from 15th September, 1964. The petitioner has since retired and as such the relief even if prayed would have been infructuous and even otherwise such a relief could not have been granted. The second relief was for fixation of pay in Commissioner of Labour's office from 18th February, 1969 and counting for increments from 15th September, 1964. That the relief was also not granted.

3. The petitioner filed Original Application No.1187 of 19992 which was disposed of on 22nd October, 1997. The Tribunal noted that the limited question which will have to be considered was whether the petitioner had made out a case for condonation of his services for fixation of his pay, increments,

etc. It noted that the petitioner was appointed as a fresh candidate in the Labour Department after he was retrenched from N.C.C. and for that reason refused to grant relief as also on the ground of limitation.

4. At the hearing of this petition on behalf of the petitioners their learned Counsel submits that the petitioner ought to have been given benefit of continuous service including increments, etc., considering that his deemed period of appointment in N.C.S. was from 12th August, 1964. As he has not been granted the same he prays for the reliefs. In the alternative it is also prayed that atleast for the purpose of pension his services from 12th August, 1964 which has not been done.

5. We have heard learned Counsel for the parties. Considering the various orders passed we do not think that the petitioner is entitled to fixation of his salary and pay in terms as sought for. At the highest at the time of joining the post either in the N.C.C. or Labour Commissioner's office the last drawn pay could have been protected. There is nothing before us to show whether it was so done or not. Even now considering the lapse of so many years in our opinion it will not be possible to consider granting such a relief.

6. The question which really arises for consideration is whether considering the break in

service the service in N.C.S. should be counted along with the period of work in Labour Commissioner's office for working out pensionary benefits considering that the period of break of service from 25th December, 1968 and 18th February, 1969 has been condoned. It is no doubt true that the break in services from 12th August, 1964 and 15th September, 1964 has already been condoned. We, however, find that if the services rendered in N.C.C. has not been considered for the purpose of working out the petitioner's pensionary benefits then in that event that will have to be done so, considering the order dated 26th August, 1976. In the light of that, the following order:-

7. In the event the petitioner's services from 15th September, 1964 till 17th February, 1969 has not been considered for the purpose of his pensionary benefits, the Respondents are directed to do so and if not counted then to refix the petitioner's pension accordingly and pay him all benefits including arrears consequential benefits. The entire exercise to be completed in six months. Rule made partly absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)